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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,278	08/04/2006	Richard A. Belanger	70300-0106US	5013

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CLARK & BRODY  
1700 Diagonal Road, Suite 510  
Alexandria, VA 22314

EXAMINER
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WOOD, JONATHAN K

ART UNIT	PAPER NUMBER
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3754

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,278	<b>Applicant(s)</b> BELANGER ET AL.	
	<b>Examiner</b> JONATHAN WOOD	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1 and 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,033,484 to *Ornsteen* (*Ornsteen*) in view of US Patent No. 4,523,705 to *Belanger et al.* (*Belanger*).

*Ornsteen* shows a dispenser comprising a handle portion (40) with a mount (10) configured to receive a fluid cartridge (14), a plunger (48 with 46) mounted for linear motion along the longitudinal axis of the cartridge (col. 4, ll. 38-39), a trigger mechanism

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comprising a trigger (54) connected to a gripper mechanism (70) which engages the plunger in response of force to the trigger by a user (col. 6, ll. 59-67).

*Ornsteen* does not disclose that the gripper mechanism disengages completely from the plunger upon release of pressure from the trigger. However, *Belanger* discloses a trigger mechanism comprising a trigger (40) and gripper mechanism (80) which engages a plunger (84 with 86) in response to the trigger by a user (col. 4, ll. 26-31) to advance the plunger, wherein the gripper mechanism disengages completely from the plunger upon release of pressure from the trigger (inherent that a release of pressure would return the gripper mechanism to the state shown in Figure 4 in which it can clearly be seen that the gripper mechanism 80 is completely disengaged from the plunger). The substitution of the trigger mechanism of *Belanger* for the trigger mechanism of *Ornsteen* (40, 76, 78, 80 and 82 of *Belanger* for 54, 55, 70, 72, and 74 of *Ornsteen*) would have been obvious to one of ordinary skill in the art at the time of the invention since the substitution of the trigger mechanism of *Belanger* would have yielded predictable results, namely, the forward advancement of the plunger of *Ornsteen* (46 with 48) upon application of pressure to the trigger mechanism by the user of the device.

Regarding claim 4, *Ornsteen* as modified by *Belanger* shows the mount comprises an annular slot (*Ornsteen*, 15) having an angular extent of about 180 degrees (*Ornsteen*, Figure 2).

Regarding claim 5, *Ornsteen* as modified by *Belanger* shows the handle portion further comprises a drag element (*Ornsteen*, 66 with 60) engaging the plunger to

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prevent excessive movement of the plunger away from the cartridge (*Ornsteen*, col. 5, ll. 54-59).

Regarding claims 6 and 7, *Ornsteen* as modified by *Belanger* shows the trigger mechanism further comprises a pressure relief spring (*Belanger*, 78).

Regarding claim 8, *Ornsteen* as modified by *Belanger* shows the trigger mechanism comprises a return spring (*Ornsteen*, 52) attached between the gripper and a shell (*Ornsteen*, 44).

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ornsteen* in view of *Belanger* as applied to claim 1 above, and further in view of US Patent No. 5,887,765 to *Broesamle* (*Broes*).

*Ornsteen* as modified by *Belanger* discloses the claimed invention except that the plunger rod is disclosed as being smooth instead of having a plurality of teeth thereon. However, *Broes* shows that a plunger rod with a plurality of teeth thereon is an equivalent structure to one which is smooth (col. 3, ll. 57-64) in that both would function with a similar gripping mechanism (27). Therefore, because these two plunger designs were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to have substituted a plunger rod with teeth thereon for the smooth plunger rod of *Ornsteen* as modified by *Belanger*.

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5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ornsteen* in view of *Belanger* as applied to claim 1 above, and further in view of US Patent No. 4,905,550 to *Albrecht* (*Albrecht*).

*Ornsteen* as modified by *Belanger* shows all aspects of applicant's invention as set forth in claim 1, but does not disclose the plunger comprising a continuous resilient surface. However, *Albrecht* teaches it is known to utilize a continuous resilient surface (10) in a gripping interaction to improve the gripping relationship between the parts involved in the gripping interaction (col. 1, ll. 41-43). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Albrecht*, to have provided either of the parts of the gripping interaction of *Ornsteen* as modified by *Belanger* (gripping mechanism or plunger) with a continuous resilient surface in order to improve the gripping relationship between the parts.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ornsteen* in view of *Belanger* as applied to claim 1 above, and further in view of US Patent No. 4,826,049 to *Speer* (*Speer*).

*Ornsteen* as modified by *Belanger* shows all aspects of the applicant's invention as set forth in claim 1, but does not disclose the dispenser in combination with a heating stand. However, *Speer* teaches a dispenser like that of *Ornsteen* as modified by *Belanger* which is made cordless by use of a heating stand (14). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Speer*, to have made the dispenser of *Ornsteen* as modified by *Belanger*

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cordless and in combination with a heating stand in order to provide greater flexibility of use (*Speer*, col. 1, ll. 28-31).

### ***Response to Arguments***

7. Applicant's arguments filed 6/4/2010 have been fully considered but they are not persuasive.

Applicant first argues in the 2<sup>nd</sup> paragraph of the remarks that neither *Ornsteen* nor *Belanger* shows that the cartridge is supported at the end that receives the plunger. However, it is clearly shown in Figure 1 of *Ornsteen* that the cartridge is supported by mount 10 at both ends of the cartridge, including the end that receives the plunger.

Applicant next argues in the 3<sup>rd</sup> paragraph of the remarks that there is no reason to substitute the trigger mechanism of *Belanger* for that of *Ornsteen*. However, examiner reminds applicant that under the KSR rationale, simple substitution of one known element for another is considered obvious if the result is predictable. In this case, the trigger mechanism of *Belanger* is known in the art and very similar in structure and operation to that of *Ornsteen*. One of ordinary skill in the art would recognize that the use of either trigger mechanism would result in the forward advancement of the plunger of *Ornsteen* upon application of pressure to the trigger mechanism by the user of the device.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754